

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1162 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

STATE OF GUJARAT

Versus

KHODIDAS GOVINDBHAI GORIA

Appearance:

MR DN PATEL, APP for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/10/98

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)
State has preferred this appeal against the order of acquittal recorded by the learned Special Judge, Ahmedabad City in Special Case No.5 of 1994 on 12-9-1997. The respondents-accused were charged and tried for the

offences punishable under Secs.7, 13(i)(d) read with Sec.13(2) of Prevention of Corruption Act.

2. The prosecution case in short is that one Manoj Pravinbhadra Shastri gave a complaint to ACB Police on 16-3-1993 stating mainly that his brother named Kirtibhai T. Shelat, who was staying at B/2 Nilesh Park Society, Jasodanagar, had given an application on 7-5-1993 to Health Department of Ahmedabad Municipal Corporation to make empty the drianage-well of that area known as 'khal-kuva' as it was overflowing. But the authorities were not responding to his application and despite frequent enquiries. When the complainant requested one Mr.Vanrajsinh Hemalbhai Parmar of the Health Department to make empty the 'khal-kuva', he asked the complainant to pay Rs.50/- to him. As the complainant agreed to give Rs.50/-, Mr.Parmar asked him to come on the next day at 8.00 p.m. and pay Rs.50/- and told that vehicle will be sent to empty the 'khal-kuva'. So, a complaint was filed before ACB police, who, after completing the required formalities such as, calling the panchas, carrying out the pre-anthracene powder and ultraviolet lamp experiments on one Rs.50/- note to be given as bribe and drawing preliminary panchnama, went to the office of the Municipal Corporation and met Mr.Khodidas Govindbhai, Peon of that office. As Mr.Parmar was not there, the complainant requested Mr.Khodidas to send the vehicle to make empty the 'Khal-kuva'. Mr.Khodidas took the complainant and panch No.1 to a tea-shop and after having tea, demanded Rs.50/- from the complainant. Then complainant gave Rs.50/- to Mr.Khodidas, who told him to pay Mr.Mohansinh, the tea-shop owner. So, Mr.Mohansinh took Rs.50/-. Immediately ACB Police carried out raid and Khodidas, Vanrajsinh Parmar and Mohansinh were caught. They pleaded ignorance and claimed to be tried after framing the charge.

3. After hearing the learned advocates of respective parties and on appreciation of evidence, learned Special Judge acquitted the respondents-accused against which, the present appeal is preferred.

4. Learned Addl. Public Prosecutor argued that learned Special Judge has not properly appreciated the main ingredients of demand and acceptance of illegal gratification made by respondents-accused. He argued that the learned Special Judge has overlooked the panchas who are independent witnesses. He further argued that hands and trousers of accused No.3 were found with anthracene powder marks. He further argued that the evidence of Investigating Officer is not taken into

consideration by the learned Judge.

5. This Court has carefully gone through the evidence which was suggested to be read by the learned Addl. Public Prosecutor. It is to be noted that the raid was carried out on the basis of demand made by the respondent-accused No.2 and not on the basis of demand made by the respondent-accused No.1 or No.3. So, prima-facie it is established that there is no demand of bribe either from the respondent-accused No.1 or No.3. Therefore, question of implicating the respondent-accused No.1 does not arise as it is prima-facie established that no demand and acceptance was made by him.

6. It is alleged that the respondent No.2 had made a demand from the complainant but the same could not be proved by the prosecution as it is established beyond reasonable doubt that the amount of bribe was not received by him. Moreover, the complainant was not available for cross-examination as he died during the pendency of proceedings. The alleged demand made by respondent No.2 from the complainant therefore, becomes very weak evidence in the absence of non-availability of the complainant for cross-examination.

7. It is true that the anthracene-powder note was found from respondent-accused No.3-Mohansinh, a tea-shop owner. But this anthracene powder note of Rs.50/- was received by the respondent-accused No.3 towards the cost of tea. When he was about to give the balance amount, raid was carried out and he was falsely arrested. At this stage, it is to be noted that there is no previous complaint for the demand made by him. So, we are of the opinion that the respondent-accused No.3 also cannot be faulted for the receipt of the amount of Rs.50/- from the complainant.

8. We are of the view that prosecution could not establish the prima-facie case against the respondents-accused and we find no necessity to interfere with the order passed by the learned Special Judge.

9. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in Girija Nandini

Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

7. It is under the above circumstances that appeal is required to be dismissed and is accordingly dismissed.

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